

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

| | | |
|---------------------------|---|---------------------|
| JORGE LOPEZ-VARGAS, , |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 1:07-CV-118 CAS |
| |) | |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Respondent. |) | |

MEMORANDUM AND ORDER

This matter is before the Court on the motion of Jorge Lopez-Vargas,¹ a federal prisoner, to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Petitioner was charged on a number of drug related crimes. He entered into a plea agreement and ultimately pleaded guilty to possession with intent to distribute 50 grams or more of methamphetamine and carrying a firearm during a drug trafficking crime. On November 30, 2006, petitioner was sentenced to a term of 195 months in prison. The remaining counts of the indictment and superceding indictment were dismissed. No appeal was filed.

As grounds for § 2255 relief, petitioner claims that his appointed counsel was ineffective in that he did not adequately advise him regarding the content of the plea agreement, and more specifically, the waiver of his right to appeal. Petitioner also claims his counsel was ineffective because he did not file an appeal as petitioner requested.

In its response, the government states an evidentiary hearing is necessary to determine what in fact petitioner instructed his attorney to do. The Court concurs there is a factual dispute in this

¹Respondent informs the Court that petitioner's actual name is Cesar Sifuentes-Prado. Petitioner, however, was arrested and convicted under the name of Jorge Lopez-Vargas.

case, and in light of Eighth Circuit precedent, an evidentiary hearing is necessary to resolve the issues raised in petitioner's claims. Watson v. U.S., 493 F.3d 960, 964 (8th Cir. 2007).

Accordingly,

IT IS HEREBY ORDERED that an evidentiary hearing shall be held at the Thomas F. Eagleton Courthouse in Saint Louis, Missouri, on Tuesday, December 11, 2007, at 10:00 a.m. in Courtroom 12-N to determine (1) whether petitioner's trial counsel adequately instructed petitioner regarding waivers contained in the plea agreement, and (2) whether petitioner instructed his trial counsel to file a notice of appeal.

IT IS FURTHER ORDERED that Raymond R. Bolourtchi of the law firm Cofman & Wichmer P.C., 165 N. Meramec Avenue, Clayton, Missouri 63105, telephone number (314) 863-3838, is hereby appointed as counsel for petitioner.

IT IS FURTHER ORDERED that the Clerk of the Court shall provide appointed counsel with a copy of the complete Court file.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 26th day of September, 2007.